



ROBERT G. ATKINS

AGRICULTURAL COMMISSIONER/
SEALER OF WEIGHTS AND
MEASURES

County of San Diego

DEPARTMENT OF AGRICULTURE, WEIGHTS AND MEASURES

5555 Overland Avenue, Suite 3101, San Diego, CA 92123-1256

<http://www.sdcawm.org>

AGRICULTURE
(858) 694-2739
FAX (858) 495-5012

WEIGHTS & MEASURES
(858) 694-2778
FAX (858) 505-6484

COUNTY VETERINARIAN
(858) 694-2838
FAX (858) 571-4268

SAN MARCOS OFFICE
(760) 752-4700
FAX (760) 752-4703

CERTIFIED FARMERS' MARKET CERTIFICATE APPLICATION

Enclosed is an application for a Certified Farmers' Market Certificate. The fee for a Certified Farmers' Market Certificate is **\$150.00**. Fee payment must be included with the application to initiate the certification process. A certificate is effective for twelve months from the date of issue.

To qualify as an operator of a Certified Farmers' Market (CFM), you must be one of the following:

- Certified Producer
- Nonprofit Organization
- Local Government Agency

In addition to the completed application and fee payment, other documents are required to be submitted to confirm your eligibility for participation in the Direct Marketing program (see required documents on back of this page). Your application cannot be processed without submittal of the required documentation. If you are currently operating a Certified Farmers' Market and wish to avoid market closure, submit the application, fee and all documentation prior to the current CFM certificate's expiration date. **Please be aware that a certificate will not be renewed unless all outstanding fees have been paid in full.**

All agricultural products, when sold or offered for sale at a certified farmers' market, shall also comply with all applicable requirements of:

1. California Food and Agricultural Code
2. California Code of Regulations
3. California Uniform Retail Food Facilities Law, Chapter 4, Articles 1 (beginning with Section 113700), 2, 3, 4, 5, 6, 7, 11, 13, and 15.
4. California Health and Safety Code, Division 104, Part 5 and 7, Chapters 1 (beginning with Section 109875) 2, 4, 5, and 8 of the California Sherman Food, Drug, and Cosmetic Law.

Enclosed are excerpts from the California Food and Agricultural Code, the California Code of Regulations, and the California Health and Safety Code detailing some of the requirements for operators involved in the Direct Marketing Certified Farmers' Market program.

Note re: FOOD SERVICES: All special events (including street fairs, festivals, and some Certified Farmers' Markets) that involve food service/sales to the public will require a separate permit from the County of San Diego Department of Environmental Health (DEH). For more information, please call DEH at (619) 338-2329.

A Certified Farmers' Market Certificate (CFM) will not be issued until the following documents are received and approved. Please use as a checklist prior to submitting application:

If applying as a Certified Producer:

- ☐ Completed application with applicable fee
- ☐ Copy of your valid Certified Producer Certificate
- ☐ Copy of Certified Farmers' Market Rules with current date of publication
- ☐ List of the names of certified producers selling at market
- ☐ Detailed map of market location, cross streets, and CFM boundaries

(NOTE: Only agricultural products may be sold within the boundaries of a CFM. Any non-agricultural product sales must be conducted as part of a separate event outside of the CFM.)

- ☐ A clear, concise and accurate written description of Certified Farmers' Market area
- ☐ Copy of Load Sheet (form used to record daily sales by participants)

If applying as a Nonprofit Organization:

- ☐ Completed application with applicable fee
- ☐ Copy of California Franchise Tax Board nonprofit status documentation
- ☐ Copy of Certified Farmers' Market Rules with current date of publication
- ☐ List of the names of certified producers selling at market
- ☐ Detailed map of market location, cross streets, and CFM boundaries

(NOTE: Only agricultural products may be sold within the boundaries of a CFM. Any non-agricultural product sales must be conducted as part of a separate event outside of the CFM.)

- ☐ A clear, concise and accurate written description of Certified Farmers' Market area.
- ☐ Copy of Load Sheet (form used to record daily sales by participants)
- ☐ Letter authorizing market manager to act on behalf of nonprofit organization

If applying as a Local Government Agency:

- ☐ Completed application with applicable fee
- ☐ Copy of Certified Farmers' Market Rules with current date of publication
- ☐ List of the names of certified producers selling at market
- ☐ Detailed map of market location, cross streets, and CFM boundaries

(NOTE: Only agricultural products may be sold within the boundaries of a CFM. Any non-agricultural product sales must be conducted as part of a separate event outside of the CFM.)

- ☐ A clear, concise and accurate written description of Certified Farmers' Market area.
- ☐ Copy of Load Sheet (form used to record daily sales by participants)
- ☐ Letter authorizing market manager to act on behalf of government agency

If you have any questions, please contact Cindy Davis, Supervising Inspector at (858) 694-2729.

ROBERT G. ATKINS

Agricultural Commissioner

Sealer of Weights and Measures



ROBERT G. ATKINS

AGRICULTURAL COMMISSIONER
SEALER OF WEIGHTS
AND MEASURES

County of San Diego

DEPARTMENT OF AGRICULTURE, WEIGHTS & MEASURES
5555 Overland Ave., Suite 3101, San Diego, CA 92123-1256

AGRICULTURE
(858) 694-2739
FAX
(858) 505-6484
WEIGHTS & MEASURES
(858) 694-2778
FAX
(858) 505-6484

APPLICATION FOR CERTIFIED FARMERS' MARKET

APPLICANT IS (CHECK ONE)

☐ Certified Producer(s) ☐ Local Government Agency ☐ Nonprofit Organization*

APPLICANT INFORMATION

NAME OF APPLICANT:	BUSINESS PHONE ()
MAILING ADDRESS:	RESIDENCE PHONE ()
CITY AND ZIP:	FAX NUMBER ()
RESIDENCE:	OTHER NUMBER ()
CITY AND ZIP:	E-MAIL ADDRESS

MARKET INFORMATION

MARKET NAME:	
MAILING ADDRESS:	BUSINESS PHONE ()
CITY AND ZIP:	RESIDENCE PHONE ()
MARKET MANAGER NAME	FAX NUMBER ()
E-MAIL ADDRESS	

MARKET LOCATION

(Include City and Cross Streets)				
CITY	ZIP	COUNTY	SAN DIEGO	

PLANNED SCHEDULE OF OPERATION

MONTHS	TO	DAYS
HOURS	TO	EST. # OF CERTIFIED PRODUCER STALLS PER QUARTER

As the applicant, I hereby certify that the information provided on this application is true and that the Certified Farmers' Market will be operated in compliance with the Direct Marketing regulations as provided in Title 3, Chapter 3, Group 4, Article 6.5 of the California Code of Regulations.

Printed Name _____ CHECK ONE:

☐ Applicant ☐ Applicant Representative

Signature _____

Date _____

Article 6.5. Direct Marketing

§1392. Intent

The intent of this article is to facilitate the sale of agricultural products from producers and certified producers within the state directly to consumers while maintaining sufficient regulatory control to ensure that the agricultural products are of acceptable quality and that the selling activities are conducted honestly and fairly.

NOTE: Authority cited: Sections 14, 407, 42682, 42684, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code. Reference: Sections 42941, 58101, 58101.5, 58102, 58103, and 58104, Food and Agricultural Code.

HISTORY

1. New article 6.5 (~~sections 1392-1392.11~~) filed 3-31-77; effective thirtieth day thereafter (Register 77, No. 14).
2. Amendment filed 3-30-79; effective thirtieth day thereafter (Register 79, No. 13).
3. Amendment of section filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§1392.1. Direct Marketing Authorized.

(a) Notwithstanding other provisions of this Group, this article authorizes producers or certified producers of certified or noncertifiable agricultural products to sell their products, as defined in this article, directly to consumers, subject to the provisions of this article.

(b) A certified producer may sell agricultural products, which he/she has produced, at a certified farmers' market.

(c) A producer may only sell noncertifiable agricultural products which he/she has produced, at a certified farmers' market, or agricultural products which he/she has produced, at or near the point of production.

(d) Fresh fruits, nuts, and vegetables may be sold directly to consumers exempt from size, standard pack, container, and labeling requirements only by:

(1) The certified producer of the agricultural products at a stand at a certified farmers' market; or

(2) The producer of the agricultural products at a retail stand located at or near the point of production.

(e) All fresh fruits, nuts, and vegetables sold pursuant to this article shall comply with the regulations of the California Code of Regulations, title 3, subchapter 4, beginning with section 1359, governing maturity and quality.

(f) Excluding fresh fruits, nuts, and vegetables, agricultural products, as defined in this article, which are sold or offered for sale at a certified farmers' market or at or near the point of production, must comply with all applicable laws and regulations pertaining to quality and labeling.

(g) This article does not supersede the provisions of federal marketing orders, state marketing orders, state laws and regulations enforced by any state agency, or any other local health and safety laws, regulations, or ordinances.

NOTE: Authority cited: Sections 407, 42681, 42682, 42684, 47000, 47001 and 47003, Food and Agricultural Code. Reference: Sections 42941, 47002 and 47003, Food and Agricultural Code.

HISTORY

1. Amendment and numbering of undesignated introductory paragraph as subsection (a), repealer of remaining paragraphs with new subsections (b)-(e) and NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).
2. Amendment of subsection (d) and Note filed 2-4-2002 as an emergency; operative 2-4-2002 (Register 2002, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-4-2002 or emergency language will be repealed by operation of law on the following day.

§1392.2. Definitions.

Unless the context otherwise requires, the following definitions govern the construction of the language in this article.

(a) Certified Farmers' Market. A location approved by the county agricultural commissioner of that county where agricultural products are sold by producers or certified producers directly to consumers. A certified farmers' market may be operated by one or more certified producers, by a nonprofit organization, or by a local government agency.

(b) Certified Farmers' Market Certificate. A certificate issued by the county agricultural commissioner authorizing the location where agricultural products are sold by the producers directly to consumers. The certificate is valid only when bearing the original signatures of the county agricultural commissioner and the authorized representative of the certified farmers' market.

(c) Land Which the Producer or Certified Producer Controls. Land that the producer or certified producer farms and owns, rents, leases, or sharecrops.

(d) Producer. A person or separate entity that produces agricultural products by practice of the agricultural arts upon land which the person or separate entity controls. Producer may be, for the purposes of this article, a person, partnership, corporation or any other entity.

(e) Certified Producer. A producer authorized by the county agricultural commissioner to sell certified agricultural products, produced by practice of the agricultural arts upon land which the certified producer controls, directly to consumers at a certified farmers' market.

(f) Certified Producer's Certificate. A certificate issued by the county agricultural commissioner in the county of production authorizing the transportation and sale of certified products pursuant to this article.

(g) Consumer. A person who purchases and receives agricultural products at or near the point of production or at a certified farmers' market. It excludes a person who purchases fresh fruits, nuts, and vegetables for commercial resale unless such products comply with all applicable size, standard pack, containers, and labeling requirements.

(h) Direct Marketing. The sale:

(1) At a certified farmers' market of agricultural products by a certified producer to a consumer; or

Title 3. California Code of Regulations

(2) At a certified farmers' market of noncertifiable agricultural products by a producer to a consumer; or

(3) At or near the point of production of agricultural products by a producer to a consumer.

(i) Immediate Family. Parents, children, grandparents, or grandchildren of the certified producer or a family member regularly residing in the certified producer's household.

(j) Employee. Any person employed by a certified producer at a regular salary or wage, on either a full or part time basis. It does not include any person who is reselling or whose compensation is primarily based on a commission of sales.

Notwithstanding the above, an employee of an agricultural cooperative organized under the laws of California may sell the agricultural products of one of its members in accordance with the provisions of this article.

(k) Agricultural Products. Agricultural products include all certified and noncertifiable agricultural products as defined in section 1392.2(1) and section 1392.2(m).

(l) Certified Agricultural Products. Agricultural products, which are certified under the jurisdiction of the county agricultural commissioner relative to inspection and verification of compliance with the provisions of this article, include fresh fruits, nuts, vegetables, shell eggs, honey, flowers, and nursery stock

(m) Noncertifiable Agricultural Products. Noncertifiable agricultural products include all certified agricultural products that have been processed, those products other than certified agricultural products noted in (l) above from any tree, vine or plant and their flowers (including processed products), livestock (including rabbits) and livestock products, and fish and shellfish produced under controlled conditions in waters or ponds located in California.

(n) Nonprofit Organization. An organization which qualifies for nonprofit status for California income tax purposes.

(o) Market Manager. A person or persons empowered to implement the rules, regulations, policies, and directives of the governing body of a certified farmers' market.

(p) Market Rules. A set of written rules or regulations approved by each certified farmers' market. The rules and regulations may be more stringent than established state regulations, provided they do not violate or conflict with any state law or regulation governing their activities.

(q) Notice and Hearing Process. A process initiated at the discretion of a county agricultural commissioner after alleged violation(s) of the provisions of this article has occurred.

(r) Agricultural Production and Practice of the Agricultural Arts. To be involved in and make decisions regarding all phases of producing an agricultural product, which includes, but is not limited to, planting, growing, fertilizing, irrigating, cultivating, pest control, and harvesting.

(s) Partnership. A partnership is a separate entity distinct from its individual members. As a separate entity, a partnership must obtain a certified producer's certificate to

market, directly to consumers, its agricultural products, which shall be produced by practice of the agricultural arts upon land that the partnership, as a separate entity, exclusively controls.

NOTE: Authority cited: Sections 407, 42682, 47000, 47001, 47002, 47003 and 47004, Food and Agricultural Code. Reference: Sections 42941, 47000, 47001 and 47003, Food and Agricultural Code.

HISTORY

1. Amendment of subsection (a) filed 3-30-79; effective thirtieth day thereafter (Register 79, No. 13).
2. Amendment of undesignated paragraph and subsection (a), amendment and renumbering of subsections (k) to (c), (b) to (d), (c) to (e), (i) to (f), (d) to (g), (e) to (h), (g) to (i), (f) to (j), (h) to (m) and (j) to (n), with new subsections (b), (k), (l), (o), (p) and (q) filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).
3. New subsection (r) and amendment of Note filed 12-9-99; operative 1-8-2000 (Register 99, No. 50).
4. Amendment of subsections (d) and (f), new subsection (s) and amendment of Note filed 2-4-2002 as an emergency; operative 2-4-2002 (Register 2002, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-4-2002 or emergency language will be repealed by operation of law on the following day.

§1392.3. Where Direct Marketing Permitted.

HISTORY

1. Repealer filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§1392.4. Conditions of Direct Marketing

(a) Except as provided in subsection (f) below, producers or certified producers may sell or offer to sell only agricultural products which they have produced to consumers at a certified farmers' market. The certified producer's immediate family or employee(s) may also act for and sell the certified producer's agricultural products. No certifiable agricultural products may be sold at a certified farmers' market unless such products are listed on the certified producer's certificate.

(b) All agricultural products, when sold or offered for sale at a certified farmers' market or at or near the point of production, shall comply with all applicable requirements of Article 1 (beginning with Section 113700), 2, 3, 4, 5, 6, 7, 11, 13, and 15 of Chapter 4 (California Uniform Retail Food Facilities Law), Division 104, Part 7, of the California Health and Safety Code, and Chapters 1 (beginning with Section 109875), 2, 4, 5, and 8 (California Sherman Food, Drug, and Cosmetic Law), and Division 104, Part 5, of the California Health and Safety Code.

(c) Only agricultural products may be sold or offered for sale at a certified farmers' market. The sale of nonagricultural products shall not be permitted in the area designated as a certified farmers' market.

(d) The certified producer's embossed photocopy certificate shall accompany the certified agricultural products during transportation and shall be conspicuously posted at the point of sale.

(e) When any agricultural products are sold by weight, the type of scale used shall be approved by the Department of Food and Agriculture, and shall be tested and sealed for use by the county sealer-director of weights and measures.

Title 3. California Code of Regulations

(f) A certified farmers' market may allow, or prohibit, a certified producer or his/her immediate family member or employee to sell at that market certified agricultural products on behalf of a maximum of two other certified producers including, but not limited to, separate entities, such as partnerships, in which the certified producer has an interest as an individual member. If such practice is allowed, the following provisions shall be met by the certified producer and shall be specified in the certified farmers' market's rules and regulations:

(1) A certified producer shall not represent, nor be represented by more than two other certified producers in a 12-month period.

(2) Each certified producer's certified agricultural products to be sold or offered for sale shall be separated and identifiable by each certified producer's valid certificate at the point of sale.

(3) The name of the certified producer for whom another certified producer is selling shall appear on the certificate of the certified producer that is conducting sales at a certified farmers' market.

(4) The name of the certified producer who is selling the products of another certified producer shall appear on the certificate of the person or entity for whom the certified producer is selling.

(5) The certified producer selling for another certified producer shall be selling or offering for sale, at the same certified farmers' market on the same day, certified agricultural products which the certified producer conducting the sales has produced and which are in greater volume than the volume offered for sale for the other certified producer. For purposes of this section, the volume shall be measured by the weight or dollar value of the products at the time and point of sale. This volume requirement shall apply only at the beginning of each day of sale.

(6) The producer applying for certification shall obtain and submit to the agricultural commissioner, prior to certification, written authority from said other certified producers to sell on their behalf.

(7) Commission sales and buying and selling between certified producers is prohibited. Any payment made for the service of one certified producer selling for another certified producer shall not be related to the volume or value of the products sold.

(8) The operator of a certified farmers' market may prohibit or otherwise establish rules regarding sales permitted under this subsection that are more restrictive, provided that such prohibition or restriction is contained in the market's written rules and regulations.

(9) A certified producer who sells certified agricultural products on behalf of another certified producer or whose products are sold by another certified producer at a certified farmers' market shall keep for a period of not less than three years, the following records relating to such products:

(i) Date of transfer to seller and accurate amount of products, by weight, dry measure, or count, transferred. Each separate product and amount shall be recorded according to variety.

(ii) Date of sale and accurate amount of products, by weight, dry measure, or count, sold. Each separate product and amount shall be recorded according to variety.

(iii) Names of both certified producers involved.

(10) A certified producer subject to this subdivision shall produce, for inspection, records required by this section upon demand of a representative of the department or county agricultural commissioner.

(g) The provisions of this section, and any amendments thereof, shall apply to all new certified producer's certificates, including renewals, upon filing with the Secretary of State, unless another effective date has been designated by the Office of Administrative Law. Certified producer's certificates already issued shall conform to the requirements of this section, and any amendments, within twelve (12) months of the certificate issue date.

NOTE: Authority cited: Sections 407, 42682, 47000, 47001, 47002, 47003 and 47004, Food and Agricultural Code. Reference: Sections 42941, 47000, 47001, 47003 and 47004, Food and Agricultural Code.

HISTORY

1. Amendment of subsection (a) filed 3-30-79; effective thirtieth day thereafter (Register 79, No. 13).
2. Amendment of subsection (a) filed 4-4-79; effective thirtieth day thereafter (Register 79, No. 13).
3. Amendment of subsection (a) filed 2-3-82; effective thirtieth day thereafter (Register 82, No. 6).
4. Amendment of subsection (a), amendment and renumbering of subsections (b) to (e), (c) to (f), with new subsections (b), (c), (d) and (g) filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).
5. Amendment of subsections (g)-(g)(3) and amendment of Note filed 1-30-97; operative 3-1-97 (Register 97, No. 5).
6. Amendment of subsections (a) and (g), new subsections (g)(1), (g)(3) and (g)(4), subsection renumbering, amendment of subsections (g)(7)-(10) and amendment of Note filed 12-9-99; operative 1-8-2000 (Register 99, No. 50).
7. Amendment of section and Note filed 5-4-2001 as an emergency; operative 5-4-2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 9-4-2001 or emergency language will be repealed by operation of law on the following day.
8. Reinstatement of section as it existed prior to 5-4-2001 emergency action by operation of Government Code section 11346.1(f) (Register 2001, No. 48).
9. Amendment of section and Note filed 11-28-2001; operative 12-28-2001 (Register 2001, No. 48).
10. Amendment of subsections (f) and (f)(3)-(5), new subsection (g) and amendment of Note filed 2-4-2002 as an emergency; operative 2-4-2002 (Register 2002, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-4-2002 or emergency language will be repealed by operation of law on the following day.

§1392.5. Producer Certification Procedures.

(a) A producer may become certified by applying to the agricultural commissioner of the county where the producer's farm is located. A producer who farms in more than one county must be certified in each county where he/she produces

Title 3. California Code of Regulations

certifiable agricultural products for sale at a certified farmers' market.

(b) The certificate and application shall be on a form authorized by the director and include an agreement signed by the applicant that the applicant will comply with the terms of this article.

(c) Any producer shall provide, upon request by an enforcing officer or market manager, certificates, documentation, information, or any other identification that may be reasonably required to show that the conditions of this article are being met.

(d) The county agricultural commissioner shall issue only one original certificate, which bears the signatures of the agricultural commissioner and the certified producer, and the name of each destination county where the certified producer will be selling. The original certificate shall be maintained in the issuing county agricultural commissioner's office.

(e) The county agricultural commissioner shall issue an embossed photocopy of the original certificate to the certified producer, which will serve as the valid certified producer's certificate. Certified producers who intend to sell at more than one certified farmers' market must obtain the necessary number of embossed photocopies of the original certificate to comply with the provisions of this article.

(f) The issuing county agricultural commissioner shall send a photocopy of the original certificate to each destination county listed on the certified producer's certificate.

NOTE: Authority cited: Sections 14, 407, 42681, 42682, 42684, 58101.5, 58102 and 58103, Food and Agricultural Code. Reference: Sections 42941, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.

HISTORY

1. Amendment of heading, amendment and numbering of first three undesignated paragraphs as subsections (a)-(c), with repealer of remaining undesignated paragraphs, and new subsections (d)-(f) and NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§1392.6. Certification Requirements of a Certified

Farmers' Market

(a) A county agricultural commissioner may issue a certified farmers' market certificate, which specifies a location where agricultural products may be sold or offered for sale. The certificate shall indicate that the marketplace is a certified farmers' market.

(b) Application shall be made by the proposed operator(s) of a certified farmers' market and shall include a signed agreement by the operator(s) to comply with the terms of this article. The application and certificate shall be on a form authorized by the director.

(c) The county agricultural commissioner shall not issue a certificate for a certified farmers' market when notified that a permit for the operation of such market has been denied by an agency of local government.

(d) The governing body of a certified farmers' market operation for or by more than one certified producer shall

promulgate a set of market rules and regulations which specify procedural criteria pertaining to:

(1) Admission of any producer to the market(s).
(2) Admission of any agricultural products to the market(s).

(3) Removal of any producer from the market(s).

(4) Allowance of a certified producer selling on behalf of another certified producer as provided in Section 1392.4.

(e) The governing body of a certified farmers' market has authority to establish specific rules and regulations for any market(s) under its control which regulate the:

(1) Type and number of producers and certified producers admitted.

(2) Type and number of certified and noncertifiable products admitted.

(3) Methods of selling certified and noncertifiable agricultural products.

(f) The certified farmers' market's rules and regulations shall contain a clause, which states that the governing body and its designated agents shall implement and enforce all rules and regulations pertaining to the operation of a certified farmers' market in a fair and equitable manner.

(g) A current copy of the certified farmers' market's rules and regulations shall be sent to the Department of Food and Agriculture, Fruit and Vegetable Quality Control--Standardization, and to the agricultural commissioner of the county in which the certified farmers' market is located.

NOTE: Authority cited: Sections 14, 407, 42681, 42682, 42684, 47000, 47002 and 47003, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. Amendment of heading, repealer of undesignated 1st, 3rd and 4th paragraphs, amendment and numbering of undesignated second paragraph as subsections (b) and (c), and new subsections (a), (d)-(g) and NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).
2. New subsection (d)(4) and amendment of Note filed 1-30-97; operative 3-1-97 (Register 97, No. 5).

§1392.7. Certificates Issued.

(a) A county agricultural commissioner shall issue a certified producer's certificate upon review of application and determination that the applicant meets the requirements of a certified producer. When issuing the certified producer's certificate, the county agricultural commissioner should:

(1) Consider seasonal production and varieties of the products when listing the products.

(2) Insofar as practicable, include an on-site inspection of the land controlled by the producer.

(b) A county agricultural commissioner shall issue a certified farmers' market certificate upon review of application and determination that the applicant meets the requirements to operate a certified farmers' market.

(c) A certified producer's certificate shall be valid for not more than 12 months from the date of issue.

(d) A certified farmers' market certificate shall be valid for 12 months from the date of issue.

Title 3. California Code of Regulations

NOTE: Authority cited: Sections 14, 407, 42681, 42682, 42684, 58101.5, 58102 and 58103, Food and Agricultural Code. Reference: Sections 42941, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.

HISTORY

1. Amendment of subsection (a), amendment and renumbering of subsection (b) to (c), and new subsections (b) and (d), and NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§1392.8. Fees

The county agricultural commissioner may charge a fee for issuing, modifying, verifying, or renewing any certificate, including embossed photocopies, as set by the board of supervisors of that county.

NOTE: Authority cited: Sections 14, 407, 42681, 42682, 42684, 58101.5, 58102 and 58103, Food and Agricultural Code. Reference: Sections 42941, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.

HISTORY

1. Amendment of heading and section with new NOTE filed 7- 26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§1392.8.1. Certified Farmers' Market Fees

(1) Every operator of every certified farmers' market shall remit to the Department of Food and Agriculture sixty cents (\$0.60) for each certified producer represented by each certified producer's certificate and other agricultural producers participating in the market(s) on each market day for the entire quarter. The fee shall be submitted within 30 days after the end of each quarter with a form containing the following information:

- (a) Name of market sponsor
 - (b) Market certificate number
 - (c) Name and address of the market
 - (d) Name of market contact person.
 - (e) Market day(s) and hours of operation
 - (f) Telephone number and fax number through which the market representative can be reached during normal work hours.
 - (g) Quarterly period for which the report is submitted.
 - (h) Total number of certified producer certificates and other agricultural producers participating on each market day of the entire quarter.
 - (i) Amount of fees submitted
 - (j) Signature of authorized market representative.
- (2) Any operator who fails to pay the required fee within thirty (30) days after the end of the quarter in which it is due shall pay a late monthly interest penalty of one and one half (1 1/2) percent monthly amount on the unpaid balance.

NOTE: Authority cited: Sections 407, 42682, 47000, 47001 and 47021, Food and Agricultural Code. Reference: Sections 42941, 47002, 47003, 47004, 47004.1 and 47021, Food and Agricultural Code.

HISTORY

1. New section filed 12-30-99 as an emergency; operative 1-1-2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5-1-2000 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 12-30-99 order transmitted to OAL 4-19-2000 and filed 5-17-2000 (Register 2000, No. 20).

§1392.9. Direct Marketing, Compliance Requirements for the Operator of a Certified Farmers' Market.

(a) The operator of a certified farmers' market shall ensure that each person participating in the sale of agricultural products in the area designated as a certified farmers' market:

- (1) Is a producer, certified producer, or their immediate family member or employee.
- (2) Sells only certified and noncertifiable agricultural products.
- (3) Has in their possession, in the case of certifiable agricultural products, a valid certificate that is posted at the point of sale.

(4) Has each certifiable agricultural product in their possession listed on the certified producer's certificate.

(5) Who sells noncertifiable agricultural products sells only those products which were produced in accordance with the certified farmers' market's rules and regulations.

(6) Who represents another certified producer under an additional certificate, separates and identifies the items listed on each respective certificate, and that the name of the certified producer they are selling for appears on both of the certificates.

(b) The operator of a certified farmers' market shall obtain from each person participating in the sale of agricultural products in the area designated as a certified farmers' market an itemized list of all products sold at the certified farmers' market each market day.

(1) The product list shall state the name of the certified producer, the identity of each product sold as it appears on the certified producer's certificate, and the quantity of each product sold at the market.

(2) The market operator shall keep the list of products sold for a period of not less than eighteen months.

NOTE: Authority cited: Sections 407, 42682, 47000, 47002, 47003 and 47004, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 12-9-99; operative 1-8-2000 (Register 99, No. 50). For prior history, see Register 91, No. 47

§1392.9.1. Direct Marketing. Requirements for Partnerships, Sharecropping Agreements, and Similar Contractual Agreements.

(a) Every person or entity that enters into a partnership as defined in Section 1392.2(s), sharecropping, or similar contractual agreement with another person(s) or entity and that applies for a certified producer's certificate under such agreement shall provide the issuing agricultural commissioner, at the time of application, with proof of partnership as defined

Title 3. California Code of Regulations

in the United States and California Tax Codes, or the Partnership's Federal Tax Identification Number and a copy of their current written agreement which shall contain the following:

(1) A clear, concise and accurate description of the property to be farmed. The description shall include the present use of the property, the dimensions, and the location of the property; and

(2) Partners shall demonstrate equitable risk by submitting a description of each party's financial and material resource input, which shall include the degree of involvement each party has in agricultural production; and

(3) The date of the agreement and the signatures of all parties involved; and

(4) A guarantee of the signatures on the agreement by a notary public executed at the time of signing by all parties. The notarized signatures on the agreement of all parties executing the agreement.

(5) A statement of verification that the property or properties to be farmed by the partnership or producers cooperating under a similar contractual agreement are under the exclusive control of the partnership as a separate entity from its individual members.

(b) Notwithstanding the above, an enforcing officer representing the Department or agricultural commissioner may request such additional documentation as is reasonably necessary to show that the conditions of this article are being met.

(c) To qualify for a certified producer's certificate, all parties listed on the certificate shall:

(1) Have entered into the agreement prior to planting of annual and biannual crops; and

(2) Have entered into the agreement prior to or within 30 days after preparing perennial field crops for the subsequent cropping pattern (e.g., prior to the fern stage of asparagus or prior to cut back of artichokes); and

(3) Have entered into the agreement prior to bloom of tree and vine crops; and

(4) Be engaged in agricultural production upon the land which is the subject of the agreement.

(d) Any change in the terms of this agreement shall invalidate a certified producer's certificate issued under such terms. Any such change shall be reported immediately and all embossed copies of certificates issued to the partnership shall be surrendered to the issuing agricultural commissioner.

NOTE: Authority cited: Sections 407, 42682, 47000, 47001, 47002, 47003 and 47004, Food and Agricultural Code. Reference: Sections 42941, 47000, 47001 and 47003, Food and Agricultural Code.

HISTORY

1. New section filed 12-9-99; operative 1-8-2000 (Register 99, No. 50).
2. Amendment of subsection (a), new subsection (a)(5) and amendment of Note filed 2-4-2002 as an emergency; operative 2-4-2002 (Register 2002, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-4-2002 or emergency language will be repealed by operation of law on the following day.

§1392.9.2. Direct Marketing. Requirements for Farm

Leases.

(a) Every person or entity who enters into a farm lease with another person(s) or entity and who applies for a certified producer's certificate under such agreement shall provide the issuing agricultural commissioner, at the time of application, with a copy of the current written lease agreement which shall contain the following:

(1) A clear and concise accurate description of the leased property. The description shall include the present use of the property, the dimensions of the leased property and the location; and

(2) The purchase price (cost) of the lease; and

(3) The date of the agreement and the signatures of all parties involved; and

(4) A guarantee of the signatures on the agreement by a notary public executed at the time of signing by all parties. The notarized signatures on the agreement of all executing the agreement.

(b) Notwithstanding the above, an enforcing officer representing the Department or agricultural commissioner may request such additional documentation as is reasonably necessary to show that the conditions of this article are being met.

(c) To qualify for a certified producer's certificate, the person applying for the certificate shall:

(1) Assume all financial risks associated with producing agricultural products; and

(2) Enter into the agreement prior to planting of annual and biannual crops; and

(3) Enter into the agreement prior to or within 30 days after preparing perennial field crops for the subsequent cropping pattern (e.g., prior to the fern stage of asparagus or prior to cut back of artichokes), and

(4) Enter into the agreement prior to bloom of tree and vine crops, and

(5) Perform agricultural production upon the land which is the subject of the agreement.

(d) Any change in the terms of this agreement shall invalidate a certified producer's certificate issued under such terms. Any such change shall be reported immediately and all embossed copies of certificates issued to the partnership shall be surrendered to the issuing agricultural commissioner.

NOTE: Authority cited: Sections 407, 42682, 47000, 47002, 47003 and 47004, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 12-9-99; operative 1-8-2000 (Register 99, No. 50)

§1392.10. Penalties.

(a) Any county agricultural commissioner may, at any time, initiate a notice and hearing process to determine whether a violation of these provisions has occurred. The hearing process may review the actions of:

Title 3. California Code of Regulations

- (1) The certificate holder; or
- (2) A family member, employee, or another certified producer acting on behalf of the certificate holder; or
- (3) Any other person whose actions may have resulted in the violation.

(b) The notice of hearing shall be on a form approved by the director and contain:

- (1) Specific provisions violated; and
- (2) A warning to cease such violations; and
- (3) A hearing date to determine if the certificate(s) involved in the violations or participation privileges should be revoked.

(c) The county agricultural commissioner, upon determination that a violation has been made in accordance with (a), above, may:

- (1) Suspend and/or refuse, for a period of up to 18 months, to issue a certificate to the violator; and/or
- (2) Suspend, for a period of up to 18 months, the privilege of participation, under the provisions of this article, of any person whose action resulted in the violation

NOTE: Authority cited: Sections 14, 407, 42681, 42682, 42684, 58101.5, 58102 and 58103, Food and Agricultural Code. Reference: Sections 42941, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.

HISTORY

1. Repealer with new subsections (a)-(c) and NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§1392.11. Appeals.

Any person may appeal to the director for a hearing if aggrieved by any one of the following actions or decisions:

- (a) Denial of any certificate.
- (b) Suspension of any certificate.
- (c) Suspension of participation privileges.
- (d) Adoption of more stringent rules or regulations pertaining to the operation of certified farmers' markets

In all cases, the appeal must be submitted to the director in writing within 30 days of the date the action or decision was made. The director's proceeding shall, insofar as practicable, comply with the provisions of the Administrative Procedure Act (Government Code, Section 11500, et seq.), except that a department hearing officer may be used.

NOTE: Authority cited: Sections 14, 407, 42681, 42682, 42684, 58101.5 and 58104, Food and Agricultural Code. Reference: Sections 42941, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.

HISTORY

1. Repealer with new undesignated introductory paragraph, subsections (a)-(d), and undesignated final paragraph and NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§1392.12. Emergency Declaration.

(a) The director may, on an as needed, case by case basis, waive or modify specific restrictions within this Article on the direct marketing of agricultural products, including, but not limited to, restrictions or limitations on production acreage

and commodities, as well as certification requirements, if a declared plant, pest or animal quarantine, a declared natural disaster or a declared catastrophic emergency interferes with the normal operative effect of the rules.

(b) Any waivers or modifications shall be consistent with any quarantine, and the response to any natural disaster or catastrophic emergency.

(c) Prior to the utilization of any waivers or modifications, certified producers and certified farmers' markets shall enter into compliance agreements with California Department of Agriculture through the county agricultural commissioner in the county in which their certificates have been issued.

NOTE: Authority cited: Sections 407, 47000, 47001, 47002, 47003, 47004, 47005, 47005.1 and 47020, Food and Agricultural Code. Reference: Sections 47000, 47001, 47002, 47003, 47022, 47022.3 and 47022.6, Food and Agricultural Code.

HISTORY

1. New section filed 12-24-2002 as an emergency; operative 12-24-2002 (Register 2002, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-23-2003 or emergency language will be repealed by operation of law on the following day.

FOOD AND AGRICULTURAL CODE

Chapter 10.5. Direct Marketing

Article 1. General Provisions

47000. The Legislature finds and declares all of the following with regard to the direct marketing of agricultural products:

(a) Direct marketing of agricultural products benefits the agricultural community and the consumer by, among other things, providing an alternative method for growers to sell their products while benefiting the consumer by supplying quality produce at reasonable prices.

(b) Direct marketing is a good public relations tool for the agricultural industry that brings the farmer face-to-face with consumers.

(c) The marketing potential of a wide variety of California-produced agricultural products should be maximized.

(d) The department should maintain a direct marketing program and the industry should continue to encourage the sale of California-grown fresh produce.

(e) A regulatory scheme should be developed that provides the flexibility that will make direct marketing a viable marketing system.

(f) The department should assist producers in organizing certified farmers' markets and other forms of direct marketing by providing technical advice on marketing methods and in complying with the regulations that affect direct marketing programs.

(g) The department is encouraged to establish an ad hoc advisory committee to assist the department in establishing regulations affecting direct marketing of products and to advise the secretary in all matters pertaining to direct marketing.

47001. (a) The secretary may adopt regulations to encourage the direct sale by farmers to consumers of all types of California agricultural products.

(b) These regulations may include provisions to ensure and maintain quality and wholesomeness of the products.

47002. California farmers may transport for sale and sell California-grown fresh fruits, nuts, and vegetables that they produce, directly to the public, which produce shall be exempt from size, standard pack, container, and labeling requirements, at a certified farmers' market or at a retail stand located at or near the point of production, subject to the following conditions:

(a) All fresh fruits, nuts, and vegetables sold shall comply with the California Code of Regulations governing maturity and quality.

(b) No exemption granted by this section supersedes the provisions of federal marketing orders, state marketing orders, or any health and safety laws, regulations, or ordinances.

(c) All fresh fruits, nuts, and vegetables sold in closed consumer containers shall be labeled with the name, address, and ZIP Code of the producer, and a declaration of identity and net quantity of the commodity in the package.

47003. The secretary may establish qualifications for persons selling products directly to consumers whenever the sales involve the use of any exemption granted by this chapter. Certified farmers' markets and producers' sales outlets, at or near the location of production, may likewise be subject to qualifications.

47004. (a) Certified farmers' markets may establish rules and procedures that are more restrictive or do not violate state law or regulation governing or implementing this chapter.

(b) Certified farmers' markets are locations established in accordance with local ordinances, where California farmers may transport and sell to the public California agricultural products that they produced, that are exempt from the established grade, size, labeling, packaging and other such requirements for fruits, nuts, and vegetables, and operated in accordance with this chapter and regulations adopted pursuant to this chapter.

(c) The governing body of any certified farmers' market operating with more than one participating certified producer shall adopt written rules and procedures pertaining to the operation of the market. The rules shall include a requirement that the governing body and its designated agents establish, implement, and enforce all rules and procedures pertaining to the operation of the certified farmers' market in a fair, nondiscriminatory, and equitable manner.

47004.1. (a) Any certified producer aggrieved by a rule or procedure of a certified farmers' market may submit a written request to the department for an advisory opinion as to whether, as a question of law, the rule or procedure in dispute is consistent with this chapter and the regulations implementing this chapter. Not later than 15 calendar days after the date on which the written request is received, the department shall undertake its review and issue an advisory opinion. The request for and issuance of an advisory opinion is not a prerequisite to the pursuit of any civil litigation. However, the advisory opinion shall be given substantial weight in any subsequent civil or administrative proceeding involving the parties and subject matter of the advisory opinion. The department may adopt regulations providing for the precedent value of its advisory opinions issued pursuant to this section. Notwithstanding any other provision of law, the department shall not incur liability in connection with the preparation and issuance of any advisory opinion issued pursuant to this section.

(b) The department shall provide for an informal hearing pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, with regard to any grievance of a certified producer involving questions of fact concerning any action taken by a certified farmers' market against the producer, or any implementation of a rule or procedure established by certified farmers' market against the producer, or any other related issue, as to whether application of the rule or procedure in dispute is consistent with this chapter and the regulations implementing this chapter. The informal hearing shall proceed without the option of conversion to a formal hearing. The request for an informal hearing to resolve issues involving disputes of fact is not a prerequisite to the pursuit of any civil litigation.

(c) In addition to, or in lieu of, the alternatives set forth in subdivisions (a) and (b), the parties may agree to employ mediation. If mediation fails to resolve the dispute, the parties may agree to employ binding arbitration. The department and the county agricultural commissioners shall incur no expense or liability for mediation or binding arbitration.

47005. An enforcing officer may enter and inspect any place or conveyance where products are produced, stored, packed, delivered for shipment, loaded, shipped, transported, or sold pertaining to a certified producer's certificate over which they have jurisdiction.

47005.1. An enforcing officer may inspect all products, containers, and equipment found in any place or conveyance to determine compliance with this chapter or the regulations adopted thereunder. The enforcing officer may also take representative samples of products and containers, which may be subject to any method of inspection or testing as deemed necessary.

47005.2. An enforcing officer may seize and hold as evidence all or any part of any container, pack, load, bulk lot, consignment or shipment of products which is packed, delivered for shipment, loaded, shipped, transported, or sold to secure the conviction of the party the enforcing officer knows or believes has violated or is violating any provision of this chapter or the regulations adopted thereunder.

47005.3. Any evidence that is seized under the authority of this chapter or the regulations adopted thereunder by an enforcing officer in any county may be admitted into evidence in any action taken by any other county.

Article 2. Certified Farmers' Market Advisory Committee

47010. (a) The secretary shall establish a committee which shall be known as the Certified Farmers' Market Advisory Committee. The primary goal of the committee shall be to ensure the integrity of certified farmers' markets.

(b) The committee shall be composed of 17 members and their alternates. The secretary shall appoint the members of the committee from a list of nominees provided by the industry subject to this chapter. The secretary shall appoint eight members and their alternates who shall be active certified producers, four members and their alternates who shall be certified farmers' market managers or representatives, two representatives from different major state direct marketing associations, one public member, and two members and their alternates who shall be county agricultural commissioners. An alternate member shall serve at a committee meeting only in the absence of, and shall have the same powers and duties as, the member for whom he or she is designated as alternate.

(c) The secretary shall appoint only one certified producer, certified farmers' market manager, or representative to represent any one farm or certified farmers' market and shall make every effort to ensure that there is a diverse representation from major production and market areas.

(d) The committee shall meet at the request of the secretary, the committee chairperson, or upon the request of four committee members. It shall meet at least once each year.

(e) The committee shall appoint its own officers, including a chairperson, a vice chairperson, a secretary, and any other officers it deems necessary. The committee may adopt rules that it deems are necessary for the conduct of its meetings and functions to carry out the objectives of this chapter.

47011. The committee shall be advisory to the secretary on all matters pertaining to direct marketing of agricultural products at certified farmers' markets and may make recommendations including, but not limited to, the following:

(a) The amendment, repeal, or adoption of legislation and regulations that relate to the administration and enforcement of this chapter.

(b) Administrative policies and procedures that relate to the inspection of certified producers and certified farmers' markets.

(c) Administrative civil penalties for violations of direct marketing regulations.

(d) Certification fees collected pursuant to Section 47020.

(e) Statewide review of enforcement actions.

(f) The annual budget of the department to carry out this chapter and the assessment of fees to pay for the costs incurred by the department to carry out this chapter.

(g) Alternative strategies for certification and investigation methodology, and methods for industry self-regulation and commission formation.

47012. (a) Except as provided in subdivisions (b) and (c), the term of any member of the committee shall be two years.

(b) With respect to the terms of initial members of the committee, eight members shall serve for one year and nine members shall serve for two years, with the determinations of the term of each member to be made by lot. No member of the committee shall serve more than four full consecutive two-year terms.

(c) Any vacancy that occurs during an unexpired term shall be filled by appointment for the unexpired term.

47013. The members of the committee and any alternate shall serve without compensation, but may be reimbursed by the department for travel expenses incurred in the performance of their duties.

Article 3. Certificates

47020. (a) A certified farmers' market certificate issued by a county agricultural commissioner shall be valid for 12 months from the date of issue. The county agricultural commissioner shall inspect every certified farmers' market within his or her jurisdiction at least once, in every six months of operation. The county agricultural commissioner may charge a certification and inspection fee up to a maximum rate of sixty dollars (\$60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees. If a fee is charged for conducting the certification and inspection, it shall include either the itemized actual costs, or the weighted average hourly rate, as determined on an annual basis by the county, which shall be provided to the certified farmers' market manager prior to the payment of the fee.

(b) A certified producer's certificate issued by a county agricultural commissioner may be valid for up to 12 months from the date of issue. The county agricultural commissioner in each county shall perform at least one annual onsite inspection of the property or properties listed on every certified producer's certificate issued in their county to verify production of the commodities listed on the certificate or the existence in storage of the harvested production, or both. If the certificate is issued for a period of seven months or more, the county agricultural commissioner in each county shall perform at least one additional onsite inspection or other equally appropriate measure to verify production or storage, or both. The county agricultural commissioner may charge a certificate and inspection fee up to a maximum rate of sixty dollars (\$60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees. If a fee is charged for conducting the certification and inspection, it shall include either the itemized actual costs, or the weighted average hourly rate, as determined on an annual basis by the county, which shall be provided to the producer prior to the payment of the fee.

(c) Renewal of a certified farmers' market certificate or certified producer's certificate may be denied by either the department or a county agricultural commissioner if a certified farmers' market or a certified producer is delinquent in the payment of the required state fee or any county certification and inspection fee or administrative civil penalty authorized under this chapter. The certificate shall be eligible for renewal when all outstanding balances and associated penalties or administrative fines have been paid to the department or the respective county or counties.

47021. (a) Commencing January 1, 2000, every operator of a certified farmers' market shall remit to the department, within 30 days after the end of each quarter, a fee equal to the number of certified producer certificates and other producers participating on each market day for the entire previous quarter. The fee shall be established by January 1 of each year by the department upon the

receipt of a budget recommendation from the advisory committee. The fee shall not exceed sixty cents (\$0.60) for each certified producer certificate and other agricultural producers participating on each market day. A certified farmers' market may directly recover all or part of the fee from the participating certified and other agricultural producers.

(b) Any operator of a certified farmers' market who fails to pay the required fee within 30 days after the end of the quarter in which it is due, shall pay to the department a monthly interest charge on the unpaid balance, to be determined by the department and not to exceed the maximum amount permitted by law.

(c) All fees collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund. The money generated by the imposition of the fees shall be used, upon appropriation by the Legislature, by the department, to carry out this chapter, including all of the following actions undertaken by the department:

- (1) The coordination of the advisory committee.
 - (2) The evaluation of county enforcement actions and assistance with regard to multiple county enforcement problems.
 - (3) The adoption of regulations to carry out this chapter.
 - (4) Hearing appeals from actions taken by county agricultural commissioners to enforce this chapter.
 - (5) The review of rules or procedures established by a certified farmers' market and the issuance of advisory opinions and the provision of informal hearings pursuant to Section 47004.1 as to whether the rules or procedures are consistent with this chapter and implementing regulations.
 - (6) The maintenance of a current statewide listing of certified farmers' markets with schedules of operations and locations.
 - (7) The maintenance of a current statewide listing of certified producers.
 - (8) The dissemination to all certified farmers' markets information regarding the suspension or revocation of any producer's certificate and the imposition of administrative penalties.
 - (9) Other actions, including the maintenance of special fund reserves, that are recommended by the advisory committee and approved by the department for the purpose of carrying out this chapter.
- (d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

Article 4. Violations and Enforcement

47022. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, cause to be transported, or sell any products in bulk, or in any container or subcontainer, unless such products conform to the provisions of this chapter or the regulations adopted thereunder.

47022.1. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to deceptively prepare, pack, place, deliver for shipment, load, ship, transport, or sell any products.

47022.2. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to mislabel any products, or place or have any false or misleading statement or designation of quality, grade, trademark, or trade name, on any wrapper or container, or on the label or lining of any container of any product, or on any placard that is used in connection with, or which has reference to, any products, bulk lot, bulk load, load, arrangement, or display of products.

the proposed penalty. The person shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or if the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(d) If the person, upon whom the commissioner levied a civil penalty, requested and appeared at a hearing, the person may appeal the commissioner's decision to the secretary within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the secretary.

(2) The appellant and the commissioner, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, may present the record of the hearing and a written argument to the secretary stating the ground for affirming, modifying, or reversing the commissioner's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the commissioner's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the secretary may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the secretary's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing with the commissioner pursuant to a penalty assessed under subdivision (c) may not file an appeal to the secretary pursuant to this subdivision.

(9) Review of a decision of the secretary may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) After the exhaustion of the appeal and review of procedures provided in this section, the commissioner, or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty, and, if applicable, a copy of any decision of the secretary, or his or her authorized representative, rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

47022.3. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to falsify any documents or to make any statement, representation, or assertion orally, by public outcry, proclamation, or in writing, or by any other manner or means whatever, that concerns the quality, size, maturity, condition, or any other matter that relates to products which is false, deceptive, or misleading in any particular.

47022.4. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to remove or dispose any products, or their containers to which any warning tag or notice has been affixed by an enforcing officer, or to remove the warning tag or notice from the place where it is affixed, except under a written permit to do so from an enforcing officer or under his or her specific direction.

47022.5. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to refuse to submit any container, subcontainer, load, or display of products to the inspection of an enforcing officer, or to refuse to stop any vehicle which contains products for the purpose of inspection by an enforcing officer.

47022.6. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to refuse to submit to inspection by an enforcing officer of any property used in the sales, storage, or production of agricultural products.

47022.7. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to alter in any respect any certified producer's certificate, any certified farmers' market certificate, any notice of violation, report, statement, or other document that is referred to in this chapter, which is issued by an enforcing officer.

47025. (a) In lieu of prosecution, but not precluding suspension or revocation of certified producer's certificates or certified farmers' market certificates, the secretary or the county commissioner may levy a civil penalty against a person who violates this chapter or any regulation implemented pursuant to this chapter. Actions to administer administrative civil penalties, suspensions, or both, against a certified producer may be made by the county agricultural commissioner who either issued the certified producer's certificate or issued the violation, regardless of the county or counties where the violation occurred, or where the certified producer's certificate originated. The secretary may take action to administer administrative civil penalties, suspensions, or both, against a certified producer, regardless of the county or counties where the violation occurred, or where the certified producer's certificate originated.

(b) Civil penalties shall be levied in proportion to the violation, measured as either "serious," "moderate," or "minor."

(1) "Serious" violations are repeat or intentional violations, punishable by a civil penalty of not less than four hundred one dollars (\$401) and up to a maximum of one thousand dollars (\$1,000) per violation.

(2) "Moderate" violations are repeat violations or violations that are not intentional, punishable by a civil penalty of not less than one hundred fifty-one dollars (\$151), but not more than four hundred dollars (\$400) per violation.

(3) "Minor" violations are violations that are procedural in nature, punishable by a civil penalty of not less than fifty dollars (\$50), but not more than one hundred fifty dollars (\$150) per violation.

(c) Before a civil penalty is levied pursuant to this section, the person charged with the violation shall receive written notice of the proposed action including the nature of the violation and the amount of

(f) In addition to the civil penalties prescribed in subdivision (b), the appellant may be required to cover the cost of the administrative hearing unless the decision of the secretary or county agricultural commissioner is overturned.

(g) "Person," as used in this section, means any applicant for a certified producers' certificate or certified farmers' market certificate, producer of agricultural products, certified producer, family member or employees of a certified producer, certified farmers' market manager, or certified farmers' market operator engaged or involved in the direct marketing of agricultural products at a certified farmers' market pursuant to this chapter.

47026. This article shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.